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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 JULIA POWELL KELLER-MCINTYRE, No. C-06-3209 MMC (EMC)
9 Plaintiff,

10 || v.

11 COLLEGE OF HEALTH & HUMAN
12 SERVICES, SAN FRANCISCO STATE
UNIVERSITY,

**ORDER DENYING PLAINTIFF'S
MOTION TO HOLD MARIA ALLAIN
IN CONTEMPT OF COURT**

13 || Defendant.

16 Plaintiff Julia Powell Keller-McIntyre has filed a motion to hold Maria Allain in contempt of
17 court. The Court hereby **DENIES** the motion without prejudice and **VACATES** the hearing on the
18 motion.

19 The relief sought by Ms. Keller-McIntyre is denied for now for several reasons. First, there
20 is no proof that Ms. Keller served a copy of this motion on Ms. Allain (or for that matter, on
21 Defendant the College of Health & Human Services). In other words, Ms. Allain may not be on
22 notice that a sanction is being sought against her. Second, even if Ms. Allain did receive notice of
23 the motion, the motion is defective because Ms. Keller-McIntyre failed to submit to the Court a copy
24 of the subpoena and proof that the subpoena was actually served on Ms. Allain. Although Ms.
25 Keller-McIntyre claims in her motion that she “politely gave Ms. Allain a subpoena,” she provides
26 no declaration, sworn under the penalty of perjury, that that is the case. In addition, there is no proof
27 that the College, a party to this action, received notice of the subpoena. *See Fed. R. Civ. P. 45(b)(1)*
28 (“Prior notice of any commanded production of documents and things [pursuant to a subpoena] . . .

1 shall be served on each party in the manner described by Rule 5(b)."); Fed. R. Civ. P. 30(b)(1) ("A
2 party desiring to take the deposition of any person upon oral examination shall give reasonable
3 notice in writing to every other party in the action.").

4 Although the Court denies Ms. Keller-McIntyre's motion, the denial is without prejudice so
5 that Ms. Keller-McIntyre is not barred from refiling the motion in the future. Should all the
6 requirements of service and proof of service be fulfilled. The Court notes, for Ms. Keller-
7 McIntyre's benefit, that if Ms. Allain is an employee of the College and the information she seeks
8 from Ms. Allain is in the possession, control, or custody of the College, she need not subpoena Ms.
9 Allain individually to get the information but rather may propound discovery requests directly to the
10 College. *See* "Handbook for Litigants Without a Lawyer" (enclosed via hard copy mailing), pp. 78-
11 80.

12 This order disposes of Docket No. 79.

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14 IT IS SO ORDERED.

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16 Dated: October 3, 2006

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EDWARD M. CHEN
United States Magistrate Judge

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